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ENGINEERING

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June 4, 1986

MEMO TO: Mayor James P. Perron
FROM: Gary a. Gilot *G.A. Gilot*
SUBJECT: Elkhart Products/Miles Well #19 Groundwater Contamination Problem

This is in response to your request for an update on the above referenced subject. Just to refresh your memory, it was back in the Fall of 1984 when we were first approached by Miles Laboratories regarding TCE contamination to their Well #19, which is near the intersection of Oak Street and McNaughton. The situation was characterized as an emergency and the City of Elkhart was very much concerned about the threat to production capability at the Miles, Myrtle Street Complex, particularly with their regulation by the Food and Drug Administration as well as downgradient users and the potential for additional contamination of the North Main Street Wellfield. At this point in time we were not aware of the technical information that indicated the wellfield was crossgradient and therefore not in jeopardy from this contamination. To date there have been three Board of Public Works and Safety actions regarding this discharge to the publicly owned treatment works.

The first action occurs on Tuesday, November 13, 1984 under Item 4 of the Board of Public Works and Safety agenda for that day. Miles is issued a Discharge Permit for 500 gallons per minute of water into the sewer at Oak and McNaughton. The request was approved, on the basis of allowing that certain studies would be made, for a period of 6 months.

The second Board action is described in the minutes of the Board of Works meeting of May 14, 1985, at which time Miles requested a 24 month extension of the discharge. The Board action was to extend the period by 2 months. At this time concern was raised, that rather than looking for cost effective longterm solutions, Miles had taken the position that continued discharge to the sewer, with deferrment of any cost based on its position that the pollutor pays, acting as a disincentive to seek out superior technical solutions to this groundwater contamination problem.

The third action taken by the Board of Public Works and Safety was on Tuesday, July 16, 1985.

In addition to the Board of Public Works and Safety minutes on this issue, I have attached copies of the following:

- July 19, 1985 letter to Bruce Carter from Board President Maribeth Hicks
- May 17, 1985 letter to Bruce Carter, Miles, from Maribeth Hicks Board President
- April 2, 1985 letter from O.H. Materials to Mr. Bruce Carter transmitting summary of findings of groundwater contamination study
- November 14, 1984 letter to Bruce Carter from Board President, Howard Hostetler
- November 9, 1984 letter from Bruce Carter to Board President Howard Hostetler requesting discharge permit
- Meeting of Pretreatment Staff May 10, 1985 regarding Miles Well #19
- October 2, 1985 memo from Gary Gilot to Mayor Perron, Subject: Miles Well #19 Discharge of TCE Contaminated Groundwater to the Oak Street Sewer
- October 3, 1985 memo from Gary Gilot to Mayor Perron, Richard Noser and Maribeth Hicks entitled "Crisis in Happyville".

Additionally my file includes minutes of numerous phone calls and meetings involving Elkhart Products and Miles Laboratories as well as technical information submitted on behalf of these firms by their consultants. Miles Laboratories retained the services of O.H. Materials consultants and Elkhart Products initially obtained the services of E.C. Jordan Company and has most recently switched to a remedial action plan developed by Groundwater Technologies, which is the firm that did the remedial action at the School Corporation, bus servicing facility on California Road.

The most recent development in the Miles/Elkhart Products groundwater contamination situation was a meeting with both Elkhart Products and Miles Laboratories held on May 30, 1986. Background on findings to date was provided by Elkhart Products. This was followed up by a proposed remedial action plan, also by Elkhart Products which apparently had technical concurrence from Miles Laboratories, although it was the first time that anyone from the City was made privy to this information. Thirdly, during this meeting there was a proposal of an interim solution. The bottom line on the background was that Elkhart Products was confirmed as the source of TCE contamination. The recommended remedy was to install a 1,000 GPM air stripping tower with recharge to the groundwater which could be accomplished within a period of 4 months. The length of operation of this unit is as yet unknown and could be dependent on approval from the State Board of Health. Initial estimates are that it would operate for 10 years or more.

Also involved in the remedy worked out between Elkhart Products and Miles Laboratories is that Elkhart Products would have the use of Miles wells #19 and #17 which would be hooked into the air stripping towers and recharged to the groundwater and in return Elkhart Products would allow Miles Laboratories to install a well into the deep aquifer at the extreme northwest extremity of Elkhart Products property. For the record there was no discussion of source removal.

The interim solution recommended by Miles and Elkhart Products is that well #19 be continuously discharged to the Oak Street sewer for a period of an additional 4 months while the air stripping tower is being procured and installed and made ready to operate. The other part of this interim solution is that the City of Elkhart was asked to waive all costs associated with the discharge of Miles well #19 to the Oak Street sewer.

It became evident that Miles has misled Elkhart Products into thinking that the first 8 months were a free discharge, rather than a deferrment of the costs associated with that discharge. Furthermore, it was apparent that Miles had coached Elkhart Products to request payment based on incremental cost, even though the former City Engineer should be well aware of the fact that there are Federal Regulations governing the rate making for publicly owned treatment works and that a gallon of wastewater, whether it is from a residential customer or an industrial process discharge or a groundwater cleanup discharge, such as well #19, it must all be treated the same.

In an effort to reach a compromise on this matter, the City of Elkhart Board of Public Works and Safety held a brief caucus with the Mayor to discuss a compromise whereby Miles Laboratories would be charged for the discharge of well #19 for the entire duration of discharge at a rate equal to the operation and maintenance and replacement costs while offering a complete waiver of the debt service and local capital costs portion of the unit charge. This amounted to approximately a 33% reduction in cost and represented, in the City's opinion, a technically and financially defensible position since there is total local discretion over how the utility recovers its capital costs, whereas our treatment facility, which has been built and improved using EPA Grant money, is subject to EPA regulations for straight rate O & M and Replacement charges. At the close of the meeting it was clarified that Miles is the party with the past due bills to the City's publicly owned treatment works since they own well #19 and they petitioned for permission to discharge to the sewer. The City's offer for a waiver of debt service and local capital costs was left on the table. Elkhart Products has authorization to proceed from its parent company AMCAST, but indicated that it needed to know what the City's position was going to be on the bills and apparently felt that the City's compromise solution was unacceptable.

It is also interesting to note that part of the authorization to proceed which Elkhart Products received from their parent company, which will no doubt be labeled as a cost of clean-up on this project, is actually the cost of converting their process for metal cleaning to eliminate the use of solvents, such as TCE and replace the cleaning agent with a bio-degradable chemical. I would personally commend them for taking this action to lessen the risk of again contaminating this aquifer, however, I would put this cost in a category of a process improvement, rather than using the cost associated with this to build empathy for the firm since they are spending so much money on aquifer cleanup.

The total period of discharge if the current status continues for another 4 months will be 24 months in total. The cost of discharge under the terms and conditions of the Sewer Use and Rate Ordinance would be about \$15,000 per month, which would be a total of \$360,000. With the waiver of debt service and local capital cost, the amount due and payable under the City's compromise solution would be \$240,000 which would represent

a savings to Miles Laboratories, which presumably would be passed on to Elkhart Products, of about \$120,000. It is my opinion that if the technical representative from Miles had not misled or misinformed the Elkhart Products personnel that the first 8 months were for "free", and that they stood any change of getting an incremental cost solution the Elkhart Products representatives might have received a very fair and reasonable offer of compromise solution in a far more positive light than what was experienced.

From the onset of this groundwater contamination problem the representatives from Miles have indicated that the pollutor pays and that the discharge of contaminated groundwater to the publicly owned treatment works was a cost that the responsible party would ultimately have to bear. Now that the responsible party has been identified and an agreeable solution has been prearranged between Miles and Elkhart Products, the position of Miles appears to have changed to one that the utility rate payers (ie. residents of the City of Elkhart) should pay for the cleanup of this aquifer due to the release of hazardous materials at Elkhart Products location. I believe that the waiver of the capital cost is technically justified because we didn't specifically build that facility to have capacity available for this purpose and it is a temporary discharge; we have not taken capacity away from anyone else. However, if we were to waive any portion of the O & M and Replacement costs associated with that discharge, what we are essentially doing is transferring the cost of the remedial action on this groundwater contamination problem from the responsible party to the rest of the users of the Elkhart Municipal Wastewater collection and treatment system. If anyone has a right to be outraged about this solution, I would say its the average "Joe" who pays his \$12.00 a month sewer bill and is suddenly going to have \$360,000 over an annual revenue base of about 3.6 million or 10% cost factor added on to his bill. This being hammered home because this activity coincides with a point in time where we are proposing a rate increase to cover our improvements to the sewer system within the City of Elkhart. It's my recommendation that we hold firm on this issue. If you have any questions or need more information, please don't hesitate to contact me.

cc: Richard Noser
Maribeth Hicks